

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DERRICK A. NEELY,

Plaintiff,

v.

22-CV-228 (JLS) (HKS)

QBE INSURANCE CORPORATION,

Defendants.

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**DECISION AND ORDER**

On March 18, 2022, Plaintiff Derrick A. Neely commenced this action, which seeks to enforce against Defendant QBE Insurance Corporation a state-court judgment that Neely received against non-party Four Aces Bar and Grill. Dkt. 1. After Defendant answered the complaint, this Court referred the case to United States Magistrate Judge H. Kenneth Schroeder, Jr., to hear and determine, and to report and recommend on, all matters in this case, pursuant to 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 6.

Defendant moved for judgment on the pleadings. Dkt. 9. Plaintiff responded, and Defendant replied. Dkt. 12; Dkt. 13. On July 18, 2023, Judge Schroeder notified the parties that he intended to convert the motion for judgment on the pleadings to a motion for summary judgment and set a deadline for the parties to file any additional materials. Dkt. 16. Defendant submitted a supplemental statement of material facts. Dkt. 17. Plaintiff submitted nothing additional.

On August 10, 2023, Judge Schroeder issued a Report, Recommendation and Order (R&R), recommending that this Court (1) convert Defendant's motion for judgment on the pleadings to a motion for summary judgment, and (2) grant summary judgment to Defendant. Dkt. 18.

Neither party objected to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

Though not required to do so here, this Court nevertheless reviewed Judge Schroeder's R&R. Based on that review, and absent any objections, the Court accepts the R&R (Dkt. 18).

For the reasons stated above and in the R&R, the Court converts Defendant's motion for judgment on the pleadings (Dkt. 9) to a motion for summary judgment and grants summary judgment for Defendant. The Clerk of Court shall close this case.

SO ORDERED.

Dated: September 27, 2023  
Buffalo, New York



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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE